

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 14 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

WILLIAM BOWDEN,

Petitioner,

v.

MARINE TERMINALS CORPORATION
et al.,

Respondents.

No. 03-74799

BRB Nos. BRB-02-0617

13-0097862

01-LHC-2045, 2046

MEMORANDUM*

On Petition for Review of an Order of the
Benefits Review Board

Argued and Submitted October 17, 2005
San Francisco, California

Before: D.W. NELSON, RAWLINSON, and BEA, Circuit Judges.

1. Petitioner William Bowden argues that his ten percent disability award should be re-evaluated considering “industrial” factors as they affect his scheduled injury. We disagree. Under the Longshore and Harbor Workers’ Compensation

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Act, 33 U.S.C. § 901 *et seq.*, if a claimant experiences a scheduled injury, the award is set by a predetermined formula. *See Gen. Constr. Co. v. Castro*, 401 F.3d 963, 969 (9th Cir. 2005) (citing *Potomac Elec. Power Co. v. Director, Office of Workers' Comp. Programs*, 449 U.S. 268, 273-80 (1980)).

2. Bowden also argues that the Administrative Law Judge (ALJ) was required to consider other factors to determine disability because the ALJ's disability assessment was based on the American Medical Association *Guides to the Evaluation of Permanent Impairment* (AMA Guides), which state that other factors must be used to assess disability. We again disagree because the AMA Guides may be used in assessing the extent of an impairment without being used to determine disability. *See Tucker v. Lockheed Shipbuilding Co.*, 37 B.R.B.S. 385, 390 (2003).

PETITION DENIED.